

The 22nd February, 1985

No. 9/5/84-6Lab./1376.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Escort Ltd., Tractor Division, Sector 13, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 295 of 1984

between

SHRI MAHIPAL SHARMA, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. ESCORTS LTD., TRACTOR DIVISION, SECTOR 13, FARIDABAD

Present:

Shri R. C. Sharma, for the workman.
Shri S.S. Sethi, for the respondent management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana, *vide* his order No. ID/FD/102/84/30696—701, dated 14th August, 1984, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Mahipal Sharma, workman and the respondent management of M/s. Escorts Ltd., Tractor Division, Sector 13, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Mahipal Sharma was justified and in order? If not, to what relief is he entitled?

According to the demand notice, the claimant was appointed on 27th July, 1978. On 5th May, 1983 he joined his duty at 8.00 a.m. He went to the factory. He parked his scooter at the scooter stand. The watchman is always posted at the scooter stand. At 4.30 p.m. after finishing his work, he came out of the factory. He had not been able to get his scooter dicky properly locked and in his absence they put some unusable items in his scooter. No police case was registered. He had come empty in the scooter stand. He had given his personal search on the scooter stand and when he came out of the factory he was searched and the stolen property was recovered from the dicky of the scooter. He had requested the management that the thumb-impressions be taken from the dicky of the scooter, but he was suspended on 6th May, 1983. Shri Rakesh Paruthi was appointed as enquiry officer. The enquiry officer finished the enquiry on 3rd August, 1983. He was dismissed on 12th April, 1984.

The management contested this demand notice. It is alleged that four pieces of Overload Relay belonging to the company were found from the dicky of the claimant's scooter. These pieces were unauthorised removed from the factory. The statement of the claimant was recorded. He admitted that four pieces of Overload Relay were recovered from the dicky of his scooter. Shri R. K. Kukreja, office bearer of the Union was also present. He had also given the statement confirming that articles were recovered from the dicky of the claimant's scooter. Hence the chargesheet was given on 6th May, 1983. The Enquiry Officer held the enquiry. In accordance with the principles of natural justice full opportunity was given to him. As the charges were serious the management decided to dismiss him. Hence he was dismissed, *vide* letter dated 12th April, 1984. This action is justified.

In the rejoinder the workman has contended that Shri Dharam Pal, in conspiracy with the others, placed certain articles in the dicky of the claimant's scooter. The scooter stand is watched by the watchman of the company. If any person entered the scooter stand, he was personally searched. It is further alleged that the chargesheet was issued by unauthorised person. He was dismissed by an unauthorised person. It is further alleged that the enquiry was conducted by an interested person. The representative of the workman was also chargesheeted.

The parties contested the reference on the following issues:—

1. Whether the domestic enquiry is fair and proper?
2. As per reference?

I have heard the representatives of both the parties and have gone through the entire evidence, produced by the parties, with the help of both the representative. My findings on the issues are as under:—

Issue No. 1:

I have gone through the entire file and also gone through the statement of the witnesses produced in the court, MW-1, Shri Rakesh Paruthi, who was the enquiry officer had given full opportunity to the claimant. He

was duly represented by his representative Shri Sewa Ram, who was office bearer of the union. He was also legal secretary of the union. Hence he was represented by a qualified person. The management was represented by Shri Y.C. Talwar, who is a matric and diploma in mechanical engineering. The claimant is a graduate and competent to defend himself. The enquiry report is Ex. M-4, it is contended that the enquiry officer was biased. He was under Shri Mahapatra, who issued the chargesheet. This fact cannot prove that the enquiry was not fair and proper. It is further contended that Shri Sewa Ram was also issued the chargesheet to pressurised him, not to represent the claimant properly. If Shri Sewa Ram misbehaved, he was also issued the chargesheet, which does not vitiate the enquiry. I have also gone through the chargesheet issued to Shri Sewa Ram. It has not pressurised the representative in any way. It has been mentioned at page 73 that the claimant was not allowed another advocate in place of Shri Sewa Ram. The representative of the workman had contended that as the workman was not allowed to bring an advocate, he was prejudiced. He had relied upon the judgement of Hon'ble Supreme Court in 1981-LLJ-Page 1. In the case cited above the rules were amended during the enquiry and the workman was allowed under the rules to be represented by a lawyer. In the present case the workman had made provisional request. If he had not been able to bring Shri Sewa Ram, he should be allowed to bring an advocate. Moreover, according to the standing orders of the company which are Ex. M-46, the claimant cannot bring an advocate. In the present case, the workman was represented by a legally trained mind. The representative of the management was only matriculate whereas the representative of the workman Shri Sewa Ram was a legal secretary of the union. The workman himself was also a graduate. Hence no prejudice has been caused to him. The workman had requested to be represented by Shri Sewa Ram through an application Ex. M-9, which was allowed and Shri Sewa Ram, represented the workman through out the proceeding. On the dates on which Shri Sewa Ram, did not appear no evidence was recorded.

The next contention of the representative of the claimant is that the workman could not be dismissed by Shri Mahapatra as he can be dismissed only by the company which means Board of Directors. He had relied upon the judgement of Hon'ble Supreme Court in *Brown Boveri Ltd. versus Their workman* 1968-Vol. I LLJ, page 571. This case has been distinguished by the Hon'ble Supreme Court in the case of *Heckett Engineering Company Limited* AIR-1977-SC, page 2257. It is held that it is now firmly established that the power to terminate the services is a necessarily adjunct of the power of appointment and is exercised as an incident to or consequence of that power. In this case, the workman was appointed by Deputy Manager and was admittedly dismissed by a person of higher status, namely, Shri S. K. Mahapatra. Power of attorney was also given in his favour which is Ex. M-45. The appointment letter of the claimant is Ex. M-49.

It is contended that the dismissal order speaks of the previous report of the claimant. Hence his previous record was taken into consideration. It was not a matter of chargesheet. I have also gone through the dismissal letter. His previous record was not taken into consideration rather it has been stated that there was no such thing in his previous record which entitled him to a lenient view. This does not mean he was dismissed on his previous record.

From the above discussions I find that the enquiry is fair and proper.

Issue No. 2 ;

The claimant was dismissed as four pieces of Overload Relay were found from the dicky of his scooter. Theft is a serious misconduct. The management has lost confidence in him. Hence the workman who was found to have committed theft, is liable to suffer extreme penalty. Hence the order of dismissal is justified and in order. But taking into consideration the fact that no person had seen him putting these articles in the dicky of his scooter. The scooter stand is also guarded by the watchman of the company. The workman is searched while entering at the scooter stand. In these circumstances, it cannot be said that the claimant had put these overload relays in the dicky of his scooter. It is also stated that the lock of the scooter was also defective. His past record was also not bad. In these circumstances, I give the benefit of section 11-A to the claimant and order his reinstatement with continuity of service, but without any back wages.

Dated: the 4th February, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 385, dated 16th February, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.